

REMARKS/ARGUMENTS

Status of Claims

Claims 7 and 38 have been amended.

Claims 25, 28-38, 42, 44-45 and 48-49 have been withdrawn.

Claims 1-6, 39-41, 43, and 46-47 have been canceled.

Thus, claims 7-24, 26, and 27 are currently pending in this application.

The Applicants hereby request further examination and reconsideration of the presently claimed application.

Election/Restrictions

The Office Action asserts that the Applicants' election of viscous component as a copolymer of poly(dl-lactic acid) and poly(ethylene glycol) is incommensurate with the specification. Applicants respectfully disagree, and direct the Examiner's attention to the broad disclosure in paragraphs 18 and 20 of the instant application. However, Applicants note with appreciation that the issue is moot in view of the Examiner's consideration of copolymers of dl-lactic acid, which would include a copolymer of poly(dl-lactic acid) and poly(ethylene glycol).

Information Disclosure Statement

The Information Disclosure Statement filed on March 27, 2008 was broken down by PAIR into two documents with the first part (Information Disclosure Statement (IDS) Filed (PTO/SB/08)) being incorrectly categorized as PRIOR ART. This document should be properly categorized as PROSECUTION. Applicants respectfully resubmit with this response said Information Disclosure Statement (PTO/SB/08) for consideration by the Examiner. The non-patent literatures already in PAIR are not resubmitted.

Claims Rejection – 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims 7-15, 17, 19-21, 23, 24, and 27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dalal et al. U.S. Patent Publication No. 2003/0180376 (hereinafter *Dalal*). Claims 16, 18, 22, and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being obvious over *Dalal*. Claims 8-24, 26, and 27 depend from claim 7, thus the rejected claims stand or fall on the application of the cited references to amended independent claim 7.

According to MPEP § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Likewise, as noted by the United States Supreme Court in *Graham v. John Deere Co. of Kansas City*, an obviousness determination begins with a finding that “the prior art as a whole in one form or another contains all” the elements of the claimed invention. *See Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 22 (U.S. 1966). Applicants submit that the cited reference does not disclose each and every element set forth in the pending claims. Applicants’ amended claim 7 recites:

“A bone replacement material comprising:
a viscous component; and
a plurality of biodegradable inclusions, wherein the inclusions comprise polymers and **wherein the inclusions provide an interconnected fibrous network within the bone replacement material.**” (Claim 7, emphasis added)

Support for this amendment can be found in paragraph 29 of the instant application. Similar limitations are not disclosed in *Dalal*. In contrast, *Dalal* discloses:

“The multiple pores in the porous TCP body are separate discrete voids and **are not interconnected.**” (Dalal, Abstract, emphasis added)
“The porous β -TCP body described in this invention comprises β -TCP having a multiplicity of pores. **Each pore is a single separate void partitioned by walls and is not interconnected.**” (Dalal, paragraph 59, emphasis added)

In consideration of the foregoing, Applicants respectfully submit the pending claims are neither anticipated by nor are obvious in view of the cited reference.

CONCLUSION

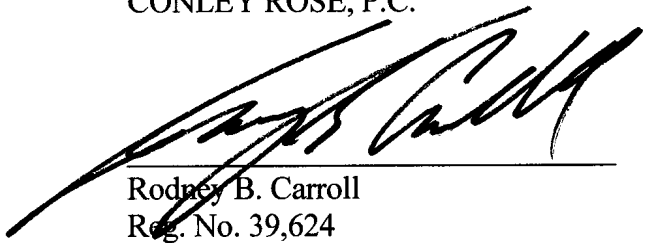
Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections is respectfully requested by Applicants. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Office Action dated May 13, 2008 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the telephone number given below.

Respectfully submitted,
CONLEY ROSE, P.C.

Date: _____

8-11-08


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